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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

**Rachael Gilburd**, an Arizona Resident;  
**Andrew Gebhart**, an Arizona Resident;  
**Daniel Featherstone**, an Arizona  
Resident; **Derek Martin**, an Arizona  
Resident; **Angela McGuire**, an Arizona  
Resident; **Kori Morin**, an Arizona  
Resident, **Katherine Redas**, an Arizona  
Resident, **Erin Salava**, an Arizona  
Resident; **David Vallejo**, a Michigan  
Resident; and **Nick Vincent**, an Arizona  
Resident, Individually and on Behalf of  
All Others Similarly Situated

Plaintiffs,

v.

**Rocket Mortgage, LLC**, a Michigan  
limited liability company;

Defendant.

**Case No.: 2:23-CV-00010-DLR**

**FIRST AMENDED COLLECTIVE  
ACTION COMPLAINT FOR  
COMPENSATION UNDER 29 U.S.C. §  
201, ET SEQ.**

**(Demand for Jury Trial)**

**(Assigned to the Hon. Douglas L. Rayes)**

Plaintiffs Rachael Gilburd, Andrew Gebhart, Daniel Featherstone, Derek Martin, Angela McGuire, Kori Morin, Katherine Redas, Erin Salava, David Vallejo, and Nick Vincent (“**Plaintiffs**”), individually, and on behalf of all other persons similarly situated for their First Amended Collective Action Complaint against Defendant Rocket Mortgage, LLC (“**Rocket**” or “**Defendant**”) hereby alleges as follows:

## **PRELIMINARY STATEMENT**

1. Plaintiffs and the Collective Members<sup>1</sup> are current and former mortgage bankers employed by Defendant.

2. Plaintiffs bring this action on behalf of themselves and all other similarly situated Collective Members who were not fully compensated their overtime wages.

3. Plaintiffs and the Collective Members were non-exempt and were not paid one-and-one-half times their regular rates of pay for all time worked in excess of 40 hours in a given workweek.

4. Plaintiffs and the Collective Members bring this action against Defendant for their unlawful failure to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. § 201-219 (hereinafter “FLSA”).

5. This is an action for equitable relief, overtime wages, unpaid wages, liquidated damages, interest, attorneys’ fees, and costs under the FLSA.

6. The FLSA was enacted “to protect all covered workers from substandard wages and oppressive working hours.” Under the FLSA, employers must pay all non-exempt employees one-and-one-half times their regular rates of pay for all time spent working in excess of 40 hours per workweek. *See* 29 U.S.C. § 207(a).

## **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201, *et seq.*

8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c)

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<sup>1</sup> Collective Members are fully defined below, under the Collective Action Allegations header.

1 because acts giving rise to the claims of Plaintiffs and the Collective Members occurred  
2 within the District of Arizona, and Defendant regularly conducts business in and has  
3 engaged in the wrongful conduct alleged herein – and, thus, are subject to personal  
4 jurisdiction in – this judicial district.

5  
6 9. This Court has jurisdiction over the subject matter and the parties hereto  
7 pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

8  
9 **PARTIES**

10 10. At all relevant times to the matters alleged herein, Plaintiffs resided in the  
11 District of Arizona.

12 11. At all relevant times to the matters alleged herein, Plaintiffs were full-time  
13 employees of Defendant.

14 12. At all relevant times to the matters alleged herein, Plaintiffs were employees  
15 of Defendant as defined by 29 U.S.C. § 203(e)(1).

16 13. At all relevant times to the matters alleged herein, Plaintiffs and the  
17 Collective Members were non-exempt employees.

18 14. Defendant Rocket Mortgage LLC is a company authorized to do business in  
19 Arizona.

20 15. Defendant was Plaintiffs' and the Collective Members' employer as defined  
21 by 29 U.S.C. § 203(d).

22 16. Upon reasonable belief, Plaintiffs and the Collective Members, in their work  
23 for Defendant, were employed by an enterprise engaged in commerce that had annual gross  
24 sales of at least \$500,000 in 2020.

25 17. Upon reasonable belief, Plaintiffs and the Collective Members, in their work  
26  
27  
28

1 for Defendant, were employed by an enterprise engaged in commerce that had annual gross  
2 sales of at least \$500,000 in 2021.

3  
4 18. Upon reasonable belief, Plaintiffs and the Collective Members, in their work  
5 for Defendant, were employed by an enterprise engaged in commerce that had annual gross  
6 sales of at least \$500,000 in 2022.

7  
8 19. At all relevant times, Plaintiffs and the Collective Members, in their work for  
9 Defendant, were engaged in commerce or the production of goods for commerce.

10  
11 20. At all relevant times, Plaintiffs and the Collective Members, in their work for  
12 Defendant, were engaged in interstate commerce.

13  
14 21. Plaintiffs and the Collective Members, in their work for Defendant, regularly  
15 handled goods produced and transported in interstate commerce.

16  
17 22. Plaintiffs and the Collective Members would communicate regarding  
18 business matters via telephone.

19  
20 23. Plaintiffs and the Collective Members are covered employees under  
21 individual coverage.

22  
23 24. Plaintiffs and the Collective Members are covered employees under  
24 enterprise coverage.

25  
26 **FACTUAL ALLEGATIONS RELATING TO PLAINTIFFS**

27  
28 25. Defendant Rocket Mortgage, LLC is a mortgage company.

29  
30 26. From approximately April 2020 through July 2021, Plaintiffs were employed  
31 by Defendant under the business entity name of Quicken Loans, LLC. On or about, July  
32 30, 2021, Quicken Loans, LLC changed its name to Rocket Mortgage, LLC.

33  
34 27. Prior to on or about April 15, 2020, Plaintiffs were employed by Defendant

1 under the business entity name of Quicken Loans, Inc. Quicken Loans, Inc. was converted  
2 into Rocket Mortgage, LLC on or about April 15, 2020.

3 28. Plaintiff Rachael Gilburd was employed by Defendant from on or around  
4 August 7, 2020 until August 27, 2022.

5 29. Plaintiff Andrew Gebhart was employed by Defendant from on or around  
6 January 14, 2013 until February 8, 2022.

7 30. Plaintiff Daniel Featherstone was employed by Defendant from on or around  
8 October 14, 2013 until August 29, 2022.

9 31. Plaintiff Derek Martin was employed by Defendant from on or around  
10 February 5, 2018 until August 12, 2022.

11 32. Plaintiff Angela McGuire was employed by Defendant from on or around  
12 January 4, 2021 until August 1, 2022.

13 33. Plaintiff Kori Morin was employed by Defendant from on or around March  
14 9, 2015 until August 17, 2022.

15 34. Plaintiff Katherine Redas was employed by Defendant from on or around  
16 June 5, 2017 until October 1, 2022.

17 35. Plaintiff Erin Salava was employed by Defendant from on or around July 2,  
18 2021 until July 19, 2022.

19 36. Plaintiff David Vallejo was employed by Defendant from on or around  
20 November 16, 2015 until May 6, 2022.

21 37. Plaintiff Nick Vincent was employed by Defendant from on or around July  
22 1, 2019 until August 18, 2022.

23 38. During their employment, Plaintiffs' were mortgage bankers whose primary  
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26  
27  
28

1 job duties included the origination of residential mortgages.

2 39. At all relevant times, Plaintiffs were to be paid what was called a “salary” on  
3 their paystubs but was really pay for 40 hours of work at an hourly rate at or near minimum  
4 wage.  
5

6 40. Prior to May of 2020, Plaintiffs received commissions based upon their  
7 ability to get loans for customers approved.  
8

9 41. Beginning in May of 2020, Plaintiffs commissions were changed to  
10 “Monthly Sales Incentive” on their paystubs.

11 42. The method of calculating the “Monthly Sales Incentive” changed regularly  
12 throughout Plaintiffs’ employment with Defendant.

13 43. Plaintiffs also received pay for incentives and contests.

14 44. Plaintiffs routinely worked in excess of 40 hours per week.

15 45. During each pay period, Plaintiffs were paid for the first 40 hours they  
16 worked at a rate at or near minimum wage and called “Salary” on their pay stub.  
17

18 46. Plaintiffs did not have a clear and mutual understanding with Defendant that  
19 the “Salary” line item on their paystubs was intended to be a fixed salary that was intended  
20 to be compensation for all hours worked each workweek regardless of the number of hours  
21 worked.  
22

23 47. The amount of the “Salary” line item on Plaintiffs’ paystubs was not  
24 sufficient to compensate Plaintiffs at a rate not less than the applicable minimum wage rate  
25 for every hour worked in those workweeks in which the numbers of hours the Plaintiffs  
26 worked was the greatest.  
27

28 48. During each pay period Plaintiffs worked over 40 hours, Plaintiffs were also

1 paid an amount for “Salary Adjust”, “Salary Adjust OT”, and “Overtime.”

2 49. Plaintiffs did not have a clear and mutual understanding of the purpose or  
3 method of calculation for the line items on their paystubs called “Salary Adjust”, “Salary  
4 Adjust OT”, and “Overtime.”

5 50. For the “Salary Adjust” line item, Plaintiffs were paid an additional amount  
6 for some overtime hours worked at the minimum wage rate.  
7

8 51. As a result of the “Salary Adjust” compensation, Plaintiffs alleged salary  
9 varied from week to week depending on the number of hours worked.  
10

11 52. In 2020 and 2021, the hourly rate at which Plaintiffs were paid for “Salary  
12 Adjust” was less than the hourly rate for their non-overtime hours.

13 53. In 2022, the hourly rate at which Plaintiffs that did not reside in Arizona were  
14 paid for “Salary Adjust” was less than the hourly rate for their non-overtime hours.  
15

16 54. Plaintiffs were also paid an amount for “Salary Adjust OT” and “Overtime”  
17 on their paystubs.

18 55. In 2020 and 2021, and 2022 for non-Arizona residents, the amounts paid for  
19 “Salary Adjust OT” and “Overtime” plus the amount for “Salary Adjust” resulted in  
20 Plaintiffs receiving less than one and a half times their regular rate of pay in each workweek  
21 on their regular paychecks.  
22

23 56. Once a month, Plaintiffs were paid commissions, monthly incentive pay,  
24 contest pay, and award gifts.  
25

26 57. The method of calculating commissions and monthly incentive pay changed  
27 numerous times during Plaintiffs employment. However, the commissions and monthly  
28 incentive pay were always based upon the number of loans that the Plaintiffs were able to

1 have approved or closed.

2 58. In addition, once a month, Plaintiffs were paid an additional sum for “Retro  
3 OT.”  
4

5 59. Plaintiffs did not have a clear and mutual understanding as to the method of  
6 calculation for the “Retro OT” line item.

7 60. The “Retro OT” pay was not calculated by adding up the amount of  
8 commissions, monthly incentive pay, or other award compensation that was attributable to  
9 a given workweek plus the regular rate for all hours worked, divided by the number of  
10 hours worked and then multiplied by 1.5 and then multiplied by the number of overtime  
11 hours.  
12

13 61. The method Defendant used for calculating the regular rate and paying out  
14 overtime was in violation of the FLSA, as they among other things only multiplied the  
15 commissions or incentive pay by one half times the overtime hours worked instead of one  
16 and a half times.  
17

18 62. While Plaintiffs were paid some overtime pay, Plaintiffs were not paid the  
19 correct amount of their overtime wages.  
20

21 63. At all times, Plaintiffs were required to be on call 24/7, seven days a week.

22 64. Plaintiffs were instructed by their supervisors, managers, and directors that  
23 they were required to promptly respond to emails and telephone calls on weeknights and  
24 weekends.  
25

26 65. If Plaintiffs failed to timely respond to emails or telephone calls after normal  
27 work hours during the week and on weekends, they could be subjected to negative  
28 comments from supervisors, discipline, threats of termination or termination.



1           66. Plaintiffs were instructed by management to refrain from engaging in  
2 activities that would prevent them from being able to promptly respond to emails or calls  
3 on weeknights and weekends.

4  
5           67. Plaintiffs were not compensated for all overtime hours they worked  
6 responding to emails or telephone calls on weeknights or on weekends.

7           68. Defendant was aware that Plaintiffs were responding to emails and taking  
8 telephone calls on weeknights and weekends and that Plaintiffs' were not being  
9 compensated for working these overtime hours.

10  
11           69. At all times relevant, Defendant improperly calculated Plaintiffs regular rate  
12 of pay pursuant to the FLSA.

13           70. Defendant failed to properly incorporate the commissions, incentives,  
14 awards, and additional compensation paid to Plaintiffs in each pay period as part of the  
15 determination of their regular rate of pay.

16  
17           71. As a result, Defendant failed to pay Plaintiffs overtime at a rate of 1.5 times  
18 Plaintiffs' regular rate of pay pursuant to the FLSA.

19  
20           72. At all relevant times during Plaintiffs' employment, Defendant failed to  
21 properly compensate Plaintiffs for all of their overtime hours worked.

22           73. Defendant was aware that Plaintiffs' working hours routinely exceeded 40  
23 hours.

24  
25           74. Defendant required Plaintiffs to work overtime as a condition of their  
26 employment.

27           75. Defendant wrongfully withheld wages from Plaintiffs by failing to pay all  
28 wages due for overtime hours Plaintiffs worked.

1           76. Defendant refused and/or failed to properly disclose or apprise Plaintiffs of  
2 their rights under the FLSA.

3           77. Defendant's failure and/or refusal to compensate Plaintiffs at the rates and  
4 amounts required by the FLSA was willful.  
5

6                           **COLLECTIVE ACTION ALLEGATIONS**

7           78. Plaintiffs, on behalf of themselves and the Collective Members, realleges and  
8 incorporates by reference all allegations in all preceding paragraphs.  
9

10          79. Plaintiffs bring this action on behalf of themselves and all other similarly  
11 situated individuals pursuant to 29 U.S.C. § 216(b).

12          80. The proposed collective class for the FLSA claim is defined as follows:

13               **All persons who work[ed] for Defendant Rocket Mortgage, LLC or its**  
14               **predecessor entities Quicken Loans, LLC and Quicken Loans, Inc.; who**  
15               **work[ed] over 40 hours in any given workweek as a past or present**  
16               **mortgage banker or similar title, or who performed the job duties of**  
17               **working with borrowers through loan processing (the "Collective**  
                  **Members").**

18          81. Plaintiffs have given their written consent to be Named Party Plaintiffs in  
19 this action pursuant to U.S.C. § 216(b). As this case proceeds, it is likely that other  
20 individuals will file consent forms and join as "opt-in" plaintiffs.  
21

22          82. At all relevant times, Plaintiffs and the Collective Members are and have  
23 been similarly situated, have had substantially similar job requirements and pay provisions,  
24 and are and/or have been subject to Defendant's decision, policy, plan, and common  
25 programs, practices, procedures, protocols, routines, and rules of willfully failing and  
26 refusing to pay one-and-one-half times Plaintiffs' and the Collective Members' regular  
27 rates of pay for all time in excess of forty (40) hours per workweek that Defendant suffered  
28 or permitted them to work.

1           83. Plaintiffs' claims stated herein are essentially the same as those of the  
2 Collective Members. This action is properly maintained as a collective action because in  
3 all pertinent aspects the employment relationship of individuals similarly situated to  
4 Plaintiffs' are identical or substantially similar.

5  
6           84. Defendant paid Plaintiffs and the Collective Members an hourly rate.

7           85. Plaintiffs and the Collective Members routinely worked over forty (40) hours  
8 in a given workweek and were not compensated at the appropriate overtime rate by  
9 Defendant for all hours they worked over forty in a given workweek.

10  
11           86. The Collective Members perform or have performed the same or similar  
12 work as Plaintiffs.

13           87. As such, the Collective Members are similar, if not identical, to Plaintiffs in  
14 terms of job duties, pay structure, and/or the denial of overtime pay.

15           88. Defendant's failure to pay overtime compensation required by the FLSA  
16 results from generally applicable policies or practices and does not depend on the personal  
17 circumstances of the Collective Members.

18  
19           89. The experiences of Plaintiffs, with respect to their pay, are typical of the  
20 experiences of the Collective Members.

21           90. All collective members, irrespective of their particular job requirements and  
22 job titles, are entitled to overtime compensation based upon their appropriately calculated  
23 regular rate of pay for hours worked in excess of forty (40) during a given workweek.

24           91. Notice of this action should be sent to all similarly situated employees.

25           92. There are numerous similarly situated current and former employees of  
26 Defendant who have been denied appropriate compensation in violation of the FLSA, who  
27  
28

1 would benefit from a Court supervised notice of the lawsuit and the opportunity to join the  
2 case.

3 93. Those similarly stated employees are known to Defendant and are readily  
4 identifiable through Defendant's records.  
5

6 **COUNT I**  
7 **(FAILURE TO PAY OVERTIME WAGES – FLSA – 29 U.S.C. § 207)**

8 94. Plaintiffs, on behalf of themselves and the Collective Members, reallege and  
9 incorporates by reference all allegations in all preceding paragraphs.

10 95. Plaintiffs and the Collective Members are/were non-exempt employees  
11 entitled to the statutorily mandated overtime wages.  
12

13 96. While employed by Defendant, Plaintiffs and the Collective Members  
14 worked numerous hours of overtime that Defendant did not pay at the correct overtime rate  
15 or at all.

16 97. As a result, Defendant has intentionally failed and/or refused to pay Plaintiffs  
17 and the Collective Members all owed overtime according to the provisions of the FLSA.  
18

19 98. Defendant further has engaged in a widespread pattern and practice of  
20 violating the provisions of the FLSA by failing and/or refusing to pay Plaintiffs and the  
21 Collective Members in accordance with 29 U.S.C. § 207.  
22

23 99. Defendant knew that – or acted with reckless disregard as to whether – their  
24 refusal or failure to properly compensate Plaintiffs and the Collective Members over the  
25 course of their employment would violate federal law, and Defendant was aware of the  
26 FLSA overtime requirements during Plaintiffs' and the Collective Members' employment.  
27 As such, Defendant's conduct constitutes a willful violation of the FLSA.  
28

100. As a result of Defendant's failure or refusal to pay Plaintiffs and the

1 Collective Members a wage equal to one-and-one-half times Plaintiffs' and the Collective  
2 Members' regular rates of pay for work they performed for Defendant in excess of their  
3 regular 40-hour workweek, Defendant violated 29 U.S.C. § 207(a).  
4

5 101. Plaintiffs and the Collective Members are therefore entitled to compensation  
6 of one-and-one-half times their regular rates of pay for all hours worked, to be proven at  
7 trial, plus an additional equal amount as liquidated damages, together with interest,  
8 reasonable attorney's fees, and costs.  
9

10 **WHEREFORE**, Plaintiffs, individually, and on behalf of all other similarly  
11 situated persons, respectfully requests that this Court grant the following relief in Plaintiffs'  
12 and the Collective Members' favor, and against Defendant:  
13

14 A. Designation of this action as a collective action on behalf of the FLSA  
15 Collective Members (asserting FLSA claims) and prompt issuance of notice pursuant to 29  
16 U.S.C. § 216(b) to all similarly situated members of the FLSA opt-in class, apprising them  
17 of the pendency of this action, and permitting them to timely assert FLSA claims in this  
18 action by filing individual Consent to Sue forms pursuant to 29 U.S.C. § 216(b);  
19

20 B. For the Court to declare and find that the Defendant committed one or more  
21 of the following acts:

- 22 i. violated overtime provisions of the FLSA, 29 U.S.C. § 207, by failing  
23 to pay overtime wages;
- 24 ii. willfully violated overtime provisions of the FLSA, 29 U.S.C. § 207;

25 C. For the Court to award compensatory damages, including liquidated damages  
26 pursuant to 29 U.S.C. § 216(b), to be determined at trial;  
27

28 D. For the Court to award prejudgment and post-judgment interest;

1 E. For the Court to award Plaintiffs' reasonable attorneys' fees and costs of the  
2 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set forth herein;

3  
4 F. For the Court to provide reasonable incentive awards for the named Plaintiffs  
5 to compensate them for the time they spent attempting to recover wages for the Collective  
6 Members and for the risks they took in doing so; and

7 G. Such other relief as this Court shall deem just and proper;

8  
9 RESPECTFULLY SUBMITTED February 10, 2023.

10  
11 **WEILER LAW PLLC**

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